

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

1. Full Name: Janiece Sylvia Marshall
2. Have you ever used or been known by any other legal name? Yes. If so, state name and reason for the name change. Jan (nickname); Janice (spelling corrected to reflect parents' intended pronunciation)
3. Work Address: Regional Justice Center, Las Vegas Justice Court, Department 3, 200 Lewis Ave., First Floor, Box 552511, Las Vegas, NV 89155-2511
4. How long have you been a continuous resident of Nevada? 23 years
5. Age: 52
(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Truckee River Community College, 7000 Dandini Boulevard, Reno, Nevada 89512 (1991)
Attended class on the environment while working as Death Penalty Law Clerk for the United States District Court, District of Nevada.

Taiwan National University, Taipei, Taiwan, Republic of China (1985-1986)
Graduate language study: I lived in Taipei, Taiwan, studying Chinese and teaching English to support myself between college and law school.

University of California, Davis, 1 Shields Avenue, Davis, California 95616 (1981-1985)
Bachelors of Arts, Economics and International Relations (double major)

Encina High School, 1400 Bell Street, Sacramento, California 95825 (1977-1981)

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

University of California, Davis

Omicron Delta Epsilon, International Honor Society for Economics

Pi Sigma Alpha, National Political Science Honor Society

Phi Mu Sorority

University of California, Davis Alumni Association Fundraiser

In addition to extracurricular commitments, I supported myself financially during college and worked thirty to forty hours per week.

Encina High School

Founded Scuba Diving Club

Senior Class Vice President and Salutatorian

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

McGeorge School of Law (1986-1989)

Juris Doctor with Distinction

Order of the Coif

Traynor Honor Society

American Jurisprudence Award: Criminal Law

American Jurisprudence Award: Criminal Procedure

American Jurisprudence Award: Contracts

Dean's Honor Roll (1986-1987)

Dean's Honor Roll (1987-1988)

Dean's Honor Roll (1988-1989)

Rank 15/220

McGeorge School of Law at University of Salzburg (1989-1990)

Masters of Law, Transnational Business Practice

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

McGeorge School of Law Library Clerk, part-time (1986-1987)

Federal Law Clerk, United States Magistrate Judge D.W. Pitts, Yosemite National Park, full-time (May-August 1987)

Sacramento Public Defender, Felony Division Law Clerk, full-time (May-August 1988)

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

Law Review: Associate Managing Editor, The Transnational Lawyer

Published law review article: *Current Developments in the Peoples Republic of China, Has China Changed?* 1 TRANSNAT'L LAW 505

International Moot Court

Sacramento District Attorney's Office Writs and Appeals Law Student-Attorney: Prepared appellate misdemeanor briefs and writs, argued before three judge panel

Law Practice

12. State the year you were admitted to the Nevada Bar: 1992
13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission: California (1990)
14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations. No.
15. Estimate what percentage of your work over the last 5 years has involved litigation matters, distinguishing between trial and appellate courts. **For judges**, answer questions 16-20 for the 5 years directly preceding your appointment or election to the bench. Prior to taking the bench in 2011, 99% of my work involved business litigation in both state and federal courts. 1% of my cases involved appellate work in both state and federal courts.
16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation. More than 99% civil litigation. Less than 1% on juvenile law (pro bono case) and administrative litigation.
17. In the past 5 years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials? 80% of my litigation involved jury trials; 20% non-jury trials.
18. Give the approximate number of jury cases tried to a conclusion during the past 5 years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period. Prior to taking the bench in 2011, although I had two jury trials, both settled during trial. During same time period only two of my non-jury trials went to decision.
19. List courts and counties in any state where you have practiced in the past 5 years.

United States District Court of Appeals, Ninth Circuit

United States District Court, District of Nevada

United States Bankruptcy Court, District of Nevada

Nevada Supreme Court

Washoe County District Court

Clark County District Court

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:
- a. case name and date,
 - b. court and presiding judge and all counsel
 - c. the importance of each case to you and the impact of each case on you,
 - d. your role in the case.

Payton v. Las Vegas Metropolitan Police Department, U.S. District Court, Nevada. Case No. CV-S-00-0243-PMP-LRL, The Honorable Phillip Pro presided. This case is important to me because I successfully defended two police officers in a civil rights wrongful death shooting case brought by the alleged widow and two minor children, all of whom witnessed the shooting of the decedent in his back by the officers. During cross-examination of the widow, I established that she lied during direct examination about being married to the decedent at the time of his death. Counsel: Walt Cannon, Robert Kossack.

Jim Rhodes Mega Bankruptcy, U.S. Bankruptcy Court, District of Nevada, Case No. BK-S-09-14814-LBR, The Honorable Linda Riegle presided. This case was significant to me as it was only the second mega bankruptcy case that I had been involved in and my client directed me to object to the complex reorganizational plan. Consequently, I had to try the case against all of Jim Rhodes' counsel as well as Credit Suisse' counsel, litigation and bankruptcy partners from national law firms in Los Angeles, New York and the D.C. offices of Akin Gump. Judge Riegle denied the Plan after trial, granting my client's request to require Rhodes Homes to put its Arizona property up for public auction. Counsel: James I. Stang, Zachariah Larson, Philip Dublin, Brett Axelrod, Shirley Cho, Janet Chubb, David Colvin, Thomas Crowe, Richard Dreitzer, Philip Gerson, Rew Goodenow, Kirby Gruchow, Carol Harris, Rodney Jean, Robert Kinan, Bart Larsen, Nile Leatham, Charles Litt, Virginia Cronan Lowe, James MacRobbie, Edward McDonald, Susan Myers, Jeffrey Olster, Eric Ransavage, Mark Somerstein, Jeffrey Sylvester, Timothy Thomas.

Helmer Co. of Nevada v. Silver Canyon Partnership, Granit Silver Development Partners, LP [Seven Hills Golf Course Litigation], Eighth Judicial District Court, Case No. 97A377455 (consolidated with 97A377489 and 97A380560), The Honorable Mark Gibbons presided. This complex case was consolidated and consisted of 288 homeowner plaintiffs and 5 builder plaintiffs suing the developers of the Seven Hills Master Planned Community. Working with a team of attorneys in and out of state, I deposed and defended hundreds of depositions and had primary responsibility for research and drafting for the extensive motion practice. I argued and prevailed on 13 consecutive motions to compel. Opposing counsel in that litigation are now federal and state court district court judges. Counsel: Francis Lynch, Sergio Salzano, Dee Hopper, Roger Wirth, Elizabeth Gonzalez, Thomas Rondeau, Thomas Kummer, Kirk Lenhard, Stefanie Shields, Lynde Selden, Eric Taylor, Dennis Haney, Garry Hayes, Michael Singer, Steven McKinley.

Ranch Center Assoc., Ltd. Partnership v. Turbo Corp, Eighth Judicial District Court, Case No. 97A378274, The Honorable Ronald D. Parraguirre presided. This case was my first jury trial as lead counsel while working at Jones Vargas. Forest City Enterprises, the client, requested that I serve as lead counsel after I worked for Forest City Enterprises on the Seven Hills Litigation. I tried the entire case and my client prevailed. The jury awarded more than requested. Counsel: Kirk Lenhard, Kevin Stolworthy, Dennis Olson, John Muije.

Ciaffone v. Skyline Restaurant and Casino, Eighth Judicial District Court, Case No. 93A319735, The Honorable Jeffrey Sobel presided. I defended the Skyline Casino against this tragic wrongful death case when a man with mental health problems walked into the Skyline Casino and killed a total stranger, Mr. Ciaffone, a tourist on vacation. I was responsible for conducting extensive discovery and worked on my first demonstrative electronic exhibit, a recreation of the shooting. Prior to trial, Judge Sobel disqualified plaintiff's counsel due to a secretary having worked on the case at both firms. The Nevada Supreme Court upheld the ruling, setting the standard for many years on disqualification of counsel. Counsel: Gerald Gillock, Julie Mersch, Leland Eugene Backus, Brian Whitaker, Joseph Cronin.

21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience. I currently work as a full-time judicial officer, Las Vegas Justice Court, Department 3, hearing both criminal and civil calendars over the past four years. I have presided over a criminal calendar for three years as the trier of fact over misdemeanor trials. I have also handled initial appearances, bail hearings, motions to suppress and preliminary hearings on gross misdemeanor and felony cases. I also presided over a civil calendar, presiding over trials and civil matters under \$10,000.00 as well as summary eviction and unlawful detainer trials. While in private practice, I was also a certified arbitrator in the mandatory, nonbinding dispute program for cases under \$40,000 in Clark County Eighth Judicial District Court.

22. Describe any pro bono or public interest work as an attorney.

Nevada Judicial Commission, appointed by the Nevada Supreme Court (2012-presently)

Standing Committee on Judicial Ethics and Campaign Practices (2006-2010), resigned when I ran for Justice of the Peace in 2010

Federal Bar Association President, (2009-2010), Board member (2006-2010)

Southern Nevada Disciplinary Committee Member, (1999-2006)

Nevada Supreme Court Functional Equivalency Committee (1999-2004)

Pro Bono Case: I represented the grandparents in obtaining custody of their grandchild. I was also historically known for being the attorney for support staff at the law firms I worked. I represented a secretary and her husband in settling a terrible car accident that significantly injured the husband. I also represented an employee and his wife shot by Robert Murdock while they were vacationing at Lake Mead. Mr. Murdock was found not guilty by reason of insanity. I prepared briefs and successfully argued before the U.S. District Court, Nevada, to deny Mr. Murdock's release from the mental institution.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Clark County Bar Association (1992-presently)
Federal Bar Association, Nevada Chapter: President (2009-2010), Vice President (2008-2009), Secretary (2007-2008), Treasurer (2006-2007), Board Member (2005-2010)
American Judges Association (2011-presently)
Nevada State Bar (1992-presently)
California State Bar (1990-presently)
Nevada Judges of Limited Jurisdiction (2011-presently)

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past 5 years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes.

The Latest In Employment Law (11/2014), Nevada Limited Jurisdiction Judges 2014 Summer Seminar (06/2014), State Bar of Nevada Annual Meeting (07/2014), Nevada Justice Association's 38th Annual Convention/Seminar (10/2014), Nevada Limited Jurisdiction Judges Winter Seminar (01/2014), State Bar of Nevada 2013 Annual Meeting (07/2013) which included Real Property and Litigation Legislative Update, Employment Law Myth busters, Ethics Mash-up, Trial Academy, Trial Evidence with Prof. Mauet, Jury Instructions, Drafting the Persuasive Brief, Hydraulic Fracturing, Trial Academy, Closing Arguments; Nevada Justice Association 37th Annual Convention/Seminar (10/2013), The Federal Language Assistance Mandate & How It Impacts Nevada State Courts (05/2013), Howard D. McKibbin American Inn of Court, "The Summons" (11/2012), Nevada Limited Jurisdiction Judges 2011 Winter Seminar (01/2011), which included AOC Orientation for New Judges, Civil Suits and Small Claims, Sample Canvasses, AA Fees, AG on DV, Drug and Alcohol Evaluation for Dummies, Indigence: What it Really Means, Judicial Canons, Evidence, Contempt, SWAT Presentation; The National Judicial College, Ethics, Fairness, and Security In Your Courtroom and Community (10/2011), State Bar of Nevada 83rd Annual Meeting (06/2011), which included National Security and Civil Liberties – Prof. Yamamoto, Hot Discovery Topics in the Tropics, Common but Avoidable Mistakes, Cultural Issues in the Courts, The Art of Negotiation – Jim Rogers, Supreme Court Review – Hon. Jay Bybee, Insurance & Health Law, Appellate Procedures, Breach or No Breach: Exploring Ethical Quandaries with Bar Counsel; The National Judicial College, Special Court Jurisdiction: Advanced (06/2011), U.S. District Court Conference (04/2010), U.S. District Court, The Search For The Truth: Challenges and Opportunities (04/2010)

25. Do you have Professional Liability Insurance or do you work for a governmental agency? I work for a governmental agency, Clark County.

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Death Penalty Law Clerk, U.S. District Court, District Nevada (1990-1992)
Judicial Law Clerk, U.S. District Court Judge Roger D. Foley (1992-1993)
Judicial Law Clerk, U.S. District Court Magistrate Judge D.W. Pitts (May-August 1986)
Davis Police Department School Crossing Guard (1981-1982)
University California Alumni Association Fundraiser (1982-1983)
Cable TV Company, Davis, CA (1983-1984)
Regal Gas Station Assistant Manager, Davis, CA (1984-1985)
Waitress, Potato Café part-time (1984-85)
English teacher to foreign speakers, part-time, Taipei, Taiwan (1985)

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business,
 - b. the nature of your duties,
 - c. the extent of your involvement in the administration or management of the business,
 - d. the terms of your service,
 - e. the percentage of your ownership.

As a partner with the New York real estate law firm of Duval & Stachenfeld, I opened and managed the Las Vegas office July 2005 to November 2007. As the managing partner for the Las Vegas office I was required to locate office space, oversee build-out of the space, purchase of furniture and supplies, hire staff and ensure that the firm was in compliance with federal, state and local laws and State Bar requirements. I did not have a specific percentage of ownership interest in the firm.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership. None.

Civic, Professional and Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state? No. Have you been a candidate for such an office? Yes. If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

The only office for which I have been candidate for elected office is my current position as a Justice of the Peace, Las Vegas Justice Court Department 3. This is also the only elected position that I have held. My term is from 2011 to 2017.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Save-the-World Committee

During 2012, I started this committee to save the world, one problem at a time and in collaboration with other members of the community, all experts in their own fields. As a judge, I witnessed, having both civil and criminal calendars over the past four years, a cycle unfold of persons being evicted from their homes due to economic conditions and then end up before me being charged criminally. I also ordered evictions of persons that previously appeared before me on my criminal calendar, many of the crimes ultimately related to drug use (buying or stealing to support a drug addiction), mental health problems giving rise to drug use for self-medication and homelessness related crimes. Save-the-World has accomplished the following:

Theft Diversion Program, Las Vegas Justice Court. I established a post-adjudication theft diversion program for Justice Court to divert theft misdemeanants to the Clark County Neighborhood Justice Center for alternative sentencing. The misdemeanor is required to undergo a self-assessment to determine the underlying problems giving rise to the criminal conduct and then enter into and execute a life plan to resolve those problems such as drug or alcohol addiction, obtain mental health counseling, job readiness training, education, duplicative identification and stable housing as well as connect with family and the community for support. In the appropriate case, the misdemeanants are permitted to withdraw their plea and have the charge dismissed in order to permit them to seal their criminal record. This is significant because a theft conviction, even a misdemeanor, can impede employment and entry into higher education institutions as well as military service. The goal of the program is to restore justice to the entire community by making the community whole, requiring the offender to account for their wrongdoing, but assist the offender in becoming a more productive member of the community. In excess of 100 offenders have successfully completed the Diversion Program with only 1 re-offending.

Retailers Association Diversion (R.A.D.) Program

Following the success of the Theft Diversion Program, I worked to expand the program to pre-adjudication theft diversion with the assistance of the Southern Nevada Retailers Association, the Clark County District Attorneys' Office, the Clark County Public Defender's Office, the Las Vegas Metropolitan Police Department ("Metro") and the Clark County Neighborhood Justice Center. Working together, we developed a pre-adjudication theft diversion program that limits theft-related arrest calls that Metro has to respond to where the offender has no outstanding warrants, has valid identification and would only be charged with a misdemeanor. The offender is given a summons in lieu of arrest and the opportunity to avoid arrest and conviction by successfully completing the diversion program. Retailers support R.A.D. because they are able to decrease the costs associated with their Loss Prevention employees for each theft-related incident while discouraging future thefts by the offenders through education of how theft impacts the entire community--stores close down due to less profitability, family and friends lose their jobs when the stores close or lay-off employees due to lower profitability. R.A.D. helps the offender avoid criminal prosecution for a moment of bad judgment. If the offender fails to complete R.A.D., prosecution proceeds timely. R.A.D. is now expanding to Northern Nevada with the assistance of the Nevada Department of Adult Education Division.

Reintegration Transitional Housing Program

Save-the-World's most recent undertaking is developing a reintegration transitional housing program for misdemeanants to reduce the cost of incarceration and reduce recidivism rates in collaboration with federal, state, county governments as well as private entities. A qualified defendant, serving only a misdemeanor sentence in a county jail, would be provided restrictive housing, supervised by house arrest officers with mandatory addiction/mental health counseling/treatment and mandatory attendance at educational, job-readiness training or employment. Misdemeanants comprise approximately 20% of CCDC's population and of those approximately 500 could be relocated into transitional housing at significantly reduced cost.

Stability Through Assistance, Resource, and Support (S.T.A.R.S.)

Clark County Detention Center (CCDC) requested Save-the-World's assistance in creating a pilot program for the depopulation of the jail through early release of a misdemeanant based upon elements of the Diversion Program. The program requires misdemeanants who meet the qualifications to undergo addiction and/or mental health counseling/treatment, participate in job-readiness training, apply for employment, obtain education. The goal of the program is to reduce the high costs of incarceration incurred by the County as well as to assist those misdemeanants that are willing to become productive members of the community.

Federal Bar Association, Nevada Chapter

From 2006 to 2010, I was on the Board of the Nevada Chapter. I attended the Federal Bar Association's Leadership Training in Virginia. As President of the Chapter, I was successful in arranging for members of the Nevada Bar to be admitted to practice before the U.S. Supreme Court. As a board member, I worked to successfully raise approximately \$100,000.00 necessary to host the annual convention in Las Vegas.

Community Peace

While clerking for the late Honorable Roger D. Foley from 1992 to 1993, I joined Community Peace to work in the community following the Rodney King riots in Los Angeles. I raised donations and worked on community outreach programs.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

National Judicial College, Facilitator, 2014. I was invited to be a facilitator for the advanced judges section for two weeks

Speaker, Real Evidence for the Trial Practitioner, Federal Civil Litigation

Presenter, Nevada Limited Jurisdiction Judges Conference 2015 "Sovereign Citizens" Beliefs, Tactics and Behavior in and outside of the Courthouse and Retribution

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

Save-the-World Committee, Founder

Unity in the Community Concert (2014), Honored as a member of the community making a difference hosted by the Reverend Judy Ann Young

33. List honors, prizes, awards, or other forms of recognition.

Nevada Army National Guard: Keynote speaker at its annual dinner, presenting me with an honorary sword for being instrumental in safeguarding the community (2013), engraved with:

“To Judge Janiece Marshall:

Thank you very much for being instrumental in the safeguarding of our community.
You are a perfect balance of Justice, Grace and Intelligence.”

Traynor Honor Society

Omicron Delta Epsilon, International Honor Society for Economics

Pi Sigma Alpha, National Political Honor Society

34. Have you at anytime in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? No. If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Current Developments in the Peoples Republic of China, Has China Changed? 1
TRANSNAT'L LAW 505

Federal Civil Litigation in Nevada, coauthored with the Hon. James C. Mahan and D. Mitchell

“A VIEW FROM THE BENCH OF LAS VEGAS JUSTICE COURT” published in the The Clark County Bar Association’s *Communique* (2014) as well as in “R.A.N.”, Retailers Association of Nevada, Nevada News, (December 2014)

36. During the past 10 years, have you been registered to vote? Yes. Have you voted in the general elections held in those years? Yes.

37. List avocational interests and hobbies.

Yoga

Certified scuba diver since high school (1980), fortunate to catch a ride on a Manta Ray on a boat dive in Puerto Vallarta

Running/hiking in the desert with my dogs

Spending time on the family ranch taking care of goats and chickens

Reading murder mysteries.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions. No.
39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? No. If yes, explain. If the disciplinary action is confidential, please respond to question 71.
40. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? No. If yes, explain.
41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? No. If yes, explain.
42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain. Paddock Pools constructed a pool for me. Its failure to pass Clark County inspections delayed construction in excess of 9 months, requiring them to build a retaining wall, raise the beam of the pool and landscape my front and backyard. Upon my eventual agreement to not sue them for negligence and breach of contract, Paddock Pools voluntarily discharged all liens and lis pendens.
43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest? No.

Other

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result. N/A
45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.) Please see attached.

46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

The diversity in my personal and professional background uniquely qualifies me for the demands of a district court judge, namely:

- Living overseas to study Mandarin
- Working as an attorney in Taipei, Taiwan drafting joint venture agreements after law school
- Clerking for the United States District Court as a Death Penalty Law Clerk as well as a judicial law clerk the Honorable Roger D. Foley
- Litigating in state and federal courts since 1993, representing both plaintiffs and defendants in a wide range of areas: general litigation, insurance defense and bad faith, complex business litigation, mega bankruptcy cases, negligence, premise liability, insurance, medical malpractice
- Presiding over both criminal and civil calendars as a Justice of the Peace since 2011

47. Attach a sample of no more than 10 pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past 5 years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

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<p style="text-align: center;">Attachment A Employment History</p>
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Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Previous Employer: Anderson, McPharlin & Conners

Phone Number: (702) 479-1010

Address: 601 S. Seventh Street, Las Vegas, Nevada 89101

From: March 2008 To: December 2010

Supervisor's Name: Carleton Burch

Supervisor's Job Title: Managing Partner, Las Vegas Office

Your Title: Senior Counsel

Specific Duties: Litigating bankruptcy, employment law, real estate and general litigation in federal and state courts. Responsible for client development and managing all aspects of litigation.

Reason for Leaving: Elected to Las Vegas Justice Court.

Previous Employer: Duval & Stachenfeld

Phone Number: (212) 883-1700

Address: 555 Madison Avenue, Suite 6, New York, New York 10022

From: July 2005 To: November 2007

Supervisor's Name: Bruce Stachenfeld

Supervisor's Job Title: Founder and Managing Partner, New York Office

Your Title: Partner

Specific Duties: Opened and managed Las Vegas office for New York firm. Responsible for case management of all litigation in Las Vegas, primarily business litigation in both federal and state court.

Reason for Leaving: This real estate law firm closed Las Vegas office and laid off 40% of attorneys in New York at the onset of the economic downturn as real estate development slowed considerably starting in 2007.

Previous Employer: Lewis, Brisbois, Bisgaard & Smith

Phone Number: (702) 893-3383

Address: 2300 South Rainbow, Suite 600, Las Vegas, Nevada 89118

From: October 2003 To: July 2005

Supervisor's Name: Lane Ashley

Supervisor's Job Title: Partner, Los Angeles Office

Your Title: Partner

Specific Duties: I previously worked as local counsel for Lewis Brisbois prior to its opening a Las Vegas office and actually opened its Las Vegas office. I practiced primarily business litigation for my real estate clients as well as product liability, contracts, employment and premises liability cases. I was responsible for all aspect of litigation in state and federal courts.

Reason for Leaving: I represented common clients with the law firm of Duval & Stachenfeld. Due to my success in representing the clients litigating, Duval & Stachenfeld offered me a partnership to open its Las Vegas office.

Previous Employer: Rawlings, Olson, Cannon, Gormley & Desruisseaux

Phone Number: (702) 384-4012

Address: 9950 West Cheyenne Avenue, Las Vegas, Nevada 89129

From: March 2001 To: October 2003

Supervisor's Name: Walt Cannon

Supervisor's Job Title: Partner

Your Title: Partner

Specific Duties: Defended Clark County and Las Vegas Metropolitan Police departments in 1983 civil rights actions as well as represented Forest City Enterprises in its business litigation cases.

Reason for Leaving: A conflict of interest arose when a client of the firm's sued my longtime client Forest City Enterprises. Lewis, Brisbois, Bisgaard & Smith offered me a partnership having worked for them as local counsel for the firm while working for Rawlings Olson.

Previous Employer: Jones Vargas

Phone Number: (702) 692-8000

Address: 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101

From: April 1998 To: March 2001

Supervisor's Name: Kirk Lenhard

Supervisor's Job Title: Litigation Partner

Your Title: Business and Real Estate Litigation Associate

Specific Duties: I was originally hired as appellate counsel; however, the firm was retained to represent the developers of the Seven Hills master planned community against the class action litigation. Consequently, I spent two years litigating the class action with a team of attorneys. I was primarily responsible for drafting all pleadings and arguing discovery disputes.

Reason for Leaving: Walt Cannon made me an offer I could not refuse, namely: litigating on behalf of Clark County and Las Vegas Metropolitan Police Department in civil rights actions before the United States District Court. As I had previously clerked for the Court, it was a wonderful opportunity to practice in federal court and litigate cases with Walt Cannon.

Previous Employer: Stephenson & Dickinson

Phone Number: (702) 474-7229

Address: 2820 West Charleston Blvd. Suite 19B, Las Vegas, Nevada 89102

From: February 1998 To: April 1998

Supervisor's Name: Bruce Dickinson

Supervisor's Job Title: Partner

Your Title: Litigation Associate

Specific Duties: General litigation, responsible for case management, discovery, trials.

Reason for Leaving: Jones Vargas contacted me to work for them doing appellate work.

Previous Employer: Mayor & Horner

Phone Number: (702) 367-1234

Address: 2012 Hamilton Lane, Las Vegas, Nevada 89108

From: February 1997 To: February 1998

Supervisor's Name: Sherman Mayor

Supervisor's Job Title: Partner

Your Title: Associate

Specific Duties: Defending doctors in medical malpractice litigation, including lead appellate counsel affirming jury defense verdict in *Hansen v. UHS*

Reason for Leaving: The firm had just opened and was not in a position to offer me a partnership. I was offered an opportunity to practice in a different area of law by another firm with more attorneys and realized I preferred working for a larger firm.

Previous Employer: Thorndal, Backus, Armstrong & Balkenbush

Phone Number: (702) 366-0622

Address: 1100 East Bridger Avenue, Las Vegas, Nevada 89101

From: September 1993 To: February 1997

Supervisor's Name: Gene Backus and John Thorndal

Supervisor's Job Title: Partner

Your Title: Litigation Associate

Specific Duties: General litigation. Significant cases I was responsible for included defending UMC and St. Rose Hospital in medical malpractice litigation and defend the Skyline Hotel & Casino in the shooting of a tourist.

Reason for Leaving: Sherman Mayor offered me a position in his new boutique medical malpractice firm after successfully litigating against him for several years in a medical malpractice case.

Question 45. Statement

The primary characteristics that set me apart as a judge, an attorney, and an individual are the following: I am hardworking, courageous and innovative. These characteristics, as well as my extensive civil litigation background and criminal experience as a Justice of the Peace, qualify me for the District Court Bench and will serve me well as a District Judge.

I have always been hardworking. Because I grew up on a small ranch in Northern California, I acquired a strong work ethic at a young age, and learned that with enough discipline and effort, I could meet any challenge. As a Justice of the Peace, I am always aware that I owe the members of this community my complete commitment to this position. I constantly strive to accommodate attorneys, witnesses, and litigants in scheduling court time, and I allow all parties to make a full record and to have a complete hearing on all issues of import.

Since the age of eighteen, I have supported myself financially. During college and law school, I always worked at least one part-time job while taking a full academic load. I graduated law school with distinction, was awarded the Order of the Coif, and consistently made the Dean's Honor Roll every year. Additionally, I received American Jurisprudence Awards in Criminal Law, Criminal Procedure, and Contracts. I attribute these accomplishments to hard work and effort, and I apply the same diligence and dedication to my current position.

I have also demonstrated courage throughout my career. As a lawyer, I had to be courageous in fighting for my clients, no matter the size or strength of the adversary. I successfully represented a water engineering firm in a mega bankruptcy case against major national law firms, resulting in the denial of a proposed reorganization plan that would have been detrimental to my clients' interests. As a Justice of the Peace, I have to make difficult decisions every day, and I have to accept the fact that parties and attorneys will sometimes leave my courtroom disappointed and even angered. Being a judge takes the courage to do what the law requires, including reaching decisions that may not be popular.

Judges have to find the most fair and just results in a case, particularly when the decisions are intellectually and emotionally challenging. In criminal cases, setting a reasonable bail or imposing a fair sentence often require setting aside the headlines, media coverage, and heartfelt letters of support for defendants and victims. Seeing justice done requires the courage to ignore popular opinion and personal beliefs, instead reaching results that adhere to the letter and the spirit of Nevada jurisprudence.

During my four years as a judge, I have also demonstrated innovation through the creation of a "Save-the-World" committee. Through this committee, I established pre- and post-theft diversion programs that not only restore justice to the community, but help offenders become more productive members of society. My programs require low-level offenders to

address their underlying problems; overwhelmingly, these underlying issues include addiction or mental health problems that significantly contribute to recidivism. I created these programs without additional earmarked funding. Instead, I corralled existing resources and collaborated with law enforcement and businesses, resulting in a program that alleviates strain on the judicial system. These programs allow successful offenders to make their victims whole while moving forward with their lives and addressing underlying causes of criminality. In addition, I am currently working with the Clark County Detention Center to develop reintegration transitional housing programs for formerly incarcerated misdemeanants. Successful reintegration programs can significantly reduce incarceration costs and recidivism rates.

In conclusion, I am qualified for this position because I am well-rounded, with extensive civil litigation experience in state and federal court, and extensive criminal experience from presiding over hundreds of criminal trials and preliminary hearings as a Justice of the Peace. After four years on the bench, I now know that actual judicial experience is the best preparation for any judicial position. Being hardworking will make me a productive and efficient District Court Judge. Being courageous will allow me to continue making difficult decisions with lasting impacts on individuals and the community at large. Finally, being innovative will help make this community a brighter, better and safer place while making the judicial system more efficient, more responsive, and more fair.

A View from the Bench of the Las Vegas Justice Court

A R.A.D.ical Approach to Combating Theft

By Judge Janiece Marshall

“Once a thief, always a thief” . . . a proverb so old it must be true, right? Well, not so fast. In fact, based upon a theft-diversion program established in my Court this past year in conjunction with the Neighbor Justice Center Senior Mediator Malcolm White, Clark County Senior Deputy District Attorney Brian Kochevar, and Clark County Assistant Public Defender Mariana Kihuen, not one offender has re-offended. Due to the success of the Theft Diversion Program, and with the additional assistance of Sergeant William Seifert with Las Vegas Metropolitan Police Department (Metro) and the Southern Nevada Association of Retailers, we have now developed the Retailers Association Diversion (“RAD”) Program.

The goal of both programs is to restore justice to the community by making the offender accountable for the harm caused, ensuring the community’s safety, and addressing the underlying factors that gave rise to the criminal conduct. The programs restore justice by requiring the offender to undergo an assessment to determine the underlying factors that gave rise to the criminal conduct, such as drug or alcohol addiction, unemployment, lack of education, or an unstable living environment. The offender then must obtain counseling, sit for the high-school equivalency test, or take a job-readiness class, whatever is needed. The offender is also held accountable to the victim for whatever damage was caused.

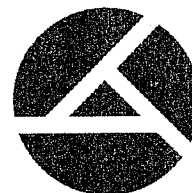
The RAD program is unique in its approach because the offender is given the chance to complete the diversion program before being charged and convicted of theft. If the offender is successful, then Metro is never called to arrest the offender, the District Attorney’s Office never prosecutes, and the Court never hears the case. The retailer saves time and money because its employees do not have to testify at preliminary hearings or trials or preliminary hearing. The offender benefits because a theft conviction affects hiring or acceptance into the military, college, and law enforcement—no matter how many years previous to application.

The community benefits because the offender has become a more productive member of society by enhancing his/her education, obtaining job skills, or dealing with addiction. If the offender is unsuccessful in either program, then prosecution proceeds, including the probability of incarceration.

It is important to note that 73 percent of persons charged with theft do not enter the store with the intent to steal. It is a moment of poor judgment that can affect a person’s future like few other criminal charges or convictions because “Once a thief, Always a thief,” right?

If you are interested in volunteering on a community panel or have questions, please contact me or the Neighborhood Justice Center. **C**

Judge Janiece Marshall was elected to the Las Vegas Justice Court Department 3 in November 2010.



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Fax: (702) 434-3650

E-mail: arashirinian@cox.net

www.arashirinianmediation.com

www.nadn.org/ara-shirinian

Find news from local, state, and federal courts at
<http://www.clarkcountybar.org/category/court/>.

JANIECE S. MARSHALL, ESQ., Nevada Bar No. 4686
 jm@amclaw.com
 ANDERSON, McPHARLIN & CONNERS LLP
 777 North Rainbow Boulevard, Suite 145
 Las Vegas, Nevada 89107
 Telephone: (702) 479-1010 ♦ Facsimile: (702) 479-1025

Attorneys for Creditor,
Stanley Consultants, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

Case No. BK-S-09-14814-LBR

THE RHODES COMPANIES, LLC,

Chapter 11

Debtor.

**STANLEY CONSULTANTS, INC'S
 OPPOSITION TO FIRST LIEN
 STEERING COMMITTEE'S
 SUPPLEMENTAL MEMORANDUM OF
 LAW IN SUPPORT OF CONFIRMATION
 OF THE SECOND AMENDED
 MODIFIED PLAN (DOC. #962)**

Affects:

- ☒ All Debtors
☐ Affects the following Debtor(s),
 Apache Framing, LLC
 Batcave, LP
 Bravo, Inc.
 Chalkline, LP
 Elkhorn Partners, a Nevada LP
 Geronimo Plumbing, LLC
 Glynda, LP
 Gung-Ho Concrete, LLC
 Heritage Land Company LLC
 Jackknife, LP
 Overflow, LP
 Parcel 20, LLC
 Pinnacle Grading, LLC
 Rhodes Homes Arizona, LLC
 Rhodes Arizona Properties, LLC
 The Rhodes Companies, LLC
 Rhodes Ranch Golf Country Club, LLC
 Rhodes Ranch General Partnership
 Six Feathers Holdings, LLC
 Tribes Holdings, LLC
 Tick, LP
 Tuscany Golf Country Club, LLC
 Wallboard, LP

LAWYERS
 777 NO. RAINBOW BLVD., SUITE 145
 LAS VEGAS, NEVADA 89107
 TEL (702) 479-1010 • FAX (702) 479-1025

Stanley Consultants, Inc. ("Stanley") opposes the First Lien Steering Committee's Supplemental Memorandum in support of Plan Confirmation of the Second Amended Modified Plan of Reorganization ("Plan") (Doc #962) on the following grounds:

1. STEERING COMMITTEE HAS FAILED TO MEET BURDEN OF PROOF THAT THE PLAN DOES NOT DISCRIMINATE UNFAIRLY AND THAT THE PLAN IS FAIR AND EQUITABLE

A. Plan Discriminates Unfairly and Is Not Fair and Equitable

1. Arizona Assets Not Properly Valued

(a) Water Rights Not Considered

The First Lien Steering Committee, as the Plan proponent, bears the burden of proof to establish that the Plan does not discriminate unfairly and that the Plan is "fair and equitable" with respect to each class of impaired claims that rejected the Plan, in this case Class C-1, the unsecured creditors class, pursuant to 11 USC § 1129(b)(1). Pursuant to FRBP 3020(b), once a plan is rejected by a class, the good faith presumption disappears. *See In re Eitemiller* 149 BR 626, 629 (BC D ID 1993). Unfair discrimination exists when a plan gives more favorable treatment to a junior creditor. *See In re Dilts* 100 BR 759, 761 (1989).

In this case, the Plan provides favorable treatment to a junior creditor, Jim Rhodes and his nondebtor Arizona entities to the detriment of Stanley. *See Exhibit 1, Frohnen Declaration*. Rhodes and his Arizona entities seek to purchase the Arizona Assets pursuant to the Mediation Settlement that occurred on August 17, 24 and 25, 2009. *See Supplement*. Stanley was not invited and, therefore, did not participate in the Mediation.

In its Supplemental Brief, the Steering Committee extensively relies upon the Mediation for its contention that the Plan does not discriminate unfairly and is fair and equitable. *See Supplement, 5-20*. The Committee provides no evidence, however, that the full value of the Arizona Assets were actually considered, either during the August 2009 Mediation or at anytime since then. Without question, the Mediation did not properly value the Arizona Assets and, therefore, Mr. Rhodes, a junior creditor, is benefiting unfairly under the Plan to the detriment of Stanley as a member of the class of the unsecured creditors that rejected the Plan.

1 Significantly, and even though Stanley has raised the issue of the water rights on several
 2 occasions during this Bankruptcy, the Steering Committee failed during the Mediation (and
 3 continues to fail in its Supplement Brief) to consider the waters rights of the Arizona Assets.
 4 *Exhibit 1, Frohnen Declaration.* For instance, the Committee relies upon the Declaration of
 5 Charles Hewlett to establish the "Valuation of the Arizona Assets". *See Supplement, Hewlett*
 6 *Declaration (page 46 of 49).* In his declaration, Mr. Hewlett fails to discuss or consider the water
 7 rights that the Debtor entities spent millions to obtain, but now are going to be sold for less than
 8 the cost of incurred for developing the water rights. Water rights in the middle of a desert have
 9 incalculable value yet Mr. Hewlett never discusses in his Declaration. *See Exhibit 1, Frohnen*
 10 *Declaration.* Mr. Hewlett failed to consider the value of the 1300 acres with water rights.
 11 Consequently, Mr. Hewlett's opinion is fatally flawed and, therefore, the Committee is unable to
 12 support its contention that it properly valued the Arizona Assets, whether at the Mediation or
 13 anytime since.

14 Based upon Stanley's knowledge and having performed millions of dollars of engineering
 15 services for water and land development in Arizona (a considerable amount of which Stanley was
 16 not paid for and is the subject matter of Stanley's proofs of claim), property in Arizona with a
 17 licensed water/sewer utility is substantially more valuable than raw desert land. *Exhibit 1,*
 18 *Frohnen Declaration.* Stanley has knowledge of the money spent by Rhodes in obtaining the
 19 water rights for the Arizona Assets given that Stanley provided services pursuant to written
 20 agreements that are attached to Stanley's Proofs of Claims in this case (POC 48, 49 and 52).

21 Stanley provided extensive planning, engineering and surveying services to Rhodes Homes
 22 Arizona LLC ("Rhodes Arizona") for various projects in Arizona and Las Vegas, Nevada.
 23 *Exhibit 1, Frohnen Declaration.* A true and correct copy of the Agreement entered into with
 24 Debtors and Stanley as well as itemized statement of unpaid invoices are attached to Stanley's
 25 Proof of Claim #52 filed in this action and are incorporated by reference as if set forth fully
 26 herein. By Stanley's estimation, Rhodes and his Arizona entities have spent millions of dollars
 27 developing the water rights associated with the Arizona Assets.

28 The services provided by Stanley at the direction of the Debtors for the improvement of

1 property located in Arizona included work on five proposed Master Planned Communities in
 2 Mohave County. *Exhibit 1, Frohnen Declaration.* Four of the five Master Planned Communities
 3 received "Area Plan" approvals from Mohave County. *Exhibit 1, Frohnen Declaration.* These
 4 Area Plan approvals are valuable land entitlement improvements to the Arizona properties. *Id.*

5 Stanley's services (that are the subject of its three proofs of claims against three of the
 6 Debtors) also include the work for the completion of master plans for water and sewer systems as
 7 well preparation of detailed construction documents ("Water and Sewer Plans and Construction
 8 Documents"). *Exhibit 1, Frohnen Declaration.* Debtors, Jim Rhodes and other nondebtor Rhodes
 9 entities used Water and Sewer Plans and the Construction Documents prepared by Stanley to
 10 entitle property not owned by Debtors but owned by Jim Rhodes and his other nondebtor Rhodes
 11 entities *Exhibit 1, Frohnen Declaration.* These improvements permitted Rhodes entities to gain
 12 approvals for water and sewer systems. *Id.*

13 In the case of Golden Valley, Stanley provided engineering services that were used to build
 14 deep groundwater well pumping systems, water storage systems and water delivery pipelines to
 15 the future community. *Exhibit 1, Frohnen Declaration.* This work is part of the services provided
 16 by Stanley that is the subject of Stanley's proofs of claim filed against the Debtors. Additionally,
 17 these plans and related technical support documents prepared by Stanley were specifically used to
 18 seek Certificates of Need and Necessity ("CCN") from the ACC. *Id.* In fact, the technical
 19 documents prepared by Stanley were the basis of the eventual approval of CCN's for the Rhodes
 20 properties. *Id.*

21 Additionally, Stanley performed preliminary water rights work for Rhodes in Arizona and
 22 arranged for a specialty co-consultant to be engaged by Rhodes to perform more detailed work to
 23 secure water rights for the various projects in Arizona. *Exhibit 1, Frohnen Declaration.* The work
 24 by Stanley and the specialty co-consultant resulted in Rhodes obtaining Letters of Water
 25 Adequacy from ADWR for up to 50,000 AF of water. *Id.* Stanley provided these services
 26 pursuant to representations made by Rhodes that the land ownership and development companies
 27 were all part of the same group of entities and all were controlled and owned at some common
 28 level, namely Jim Rhodes. *Exhibit 1, Frohnen Declaration.* Stanley was never informed of the

1 use of separate entities to hold the land versus design and develop the land. *Id.* When Stanley
 2 inquired about Rhodes' source of funds to purchase land and design and develop the properties,
 3 Rhodes specifically told Stanley that it had \$500 million of funding from Credit Suisse to
 4 prosecute the program in Arizona as he saw fit and that there was no credit risk to Stanley
 5 Consultants. *Exhibit 1, Frohnen Declaration.*

6 Stanley also performed preliminary work on two additional tracks of land for Rhodes: Red
 7 Lake and Hafley Ranch. *Exhibit 1, Frohnen Declaration.* The Red Lake and Hafley Ranch
 8 acreage was in excess of 20,000 acres and is valuable land in the burgeoning solar energy areas of
 9 the Hualapai Valley. *Id.* Stanley performed the work on Red Lake and Hafley Ranch based upon
 10 representations by Rhodes that Rhodes' ongoing development and homebuilding companies
 11 controlled and owned the properties and that Stanley's contracts for the work improved the value
 12 of the land. *Id.* The property identified in the Mediation agreement as "RHA" is property for
 13 which Stanley provided services and are included in Stanley's proofs of claim. *Exhibit 1,*
 14 *Frohnen Declaration.* This land is in the GVR development and formed the core of Phase 1. *Id.*
 15 Stanley's work for this land increased its value. *Id.*

16 Additionally, Stanley performed services for the development of the master plan or the
 17 entire region of Golden Valley as stated in the Frohnen Declaration. *Exhibit 1, Frohnen*
 18 *Declaration.* Based upon representations from the Rhodes entities, Stanley's work in this area
 19 was partially funded from proceeds of the Credit Suisse financing. *Id.* Rhodes also directed
 20 Stanley to perform services on the Aztec Park and the Well site adjacent, services that form part of
 21 the basis of Stanley's proof of claims. *Exhibit 1, Frohnen Declaration.* The ownership of these
 22 improvements is not mentioned or identified in the mediation documents. *Id.*

23 2. Assets Not Fully Accounted For or Valued in the Plan

24 A. Parcels Not Identified in Mediation that Are Owned by Debtors

25 The Mediation and the Plan fail to value all of the Arizona Assets and, therefore, the Plan
 26 unfairly discriminates in favor of junior creditor Jim Rhodes and is not "fair and equitable". For
 27 instance, Stanley has determined by a review of the public property records that the Mediation and
 28 the Plan fails to identify all of the property owned in Arizona by the Debtors and that Rhodes will

1 acquire as part of the Plan. There appear to be at least 18 parcels of land in Arizona owned by the
2 Debtors entities have not been identified and, therefore, not given proper value in the Plan.

3 *Exhibit 2, List of Unaccounted for Parcels.*

4 As such, the Plan cannot be accepted. The Committee cannot meet its burden that it does
5 not unfairly discriminate or that it is fair and equitable. The Arizona Assets have not been
6 properly valued and Rhodes and his nondebtor entities should be required to pay the proper value.

7 **B. Well Sites Purchased by Rhodes Homes Arizona Not Identified as Asset**

8 The Plan (and the Mediation documents) fail to disclose that Debtor Rhodes Home
9 Arizona purchased well sites that are not accounted for in the Mediation and in the Plan. The
10 failure to include these assets calls into question whether the Plan unfairly discriminates and is fair
11 and equitable under §1129. Attached are bids regarding these well sites that were accepted and
12 now are believed to be owned by Rhodes Homes Arizona LLC. *Exhibit 3, Well Site Bids.* As set
13 forth above, the water rights to the Arizona property are extremely valuable. *Exhibit 1, Frohnen*
14 *Declaration.* These water rights appear not to have been considered in valuing the Arizona
15 Assets. As such, the Plan cannot be crammed down.

16 **3. Absolute Priority Rule Not Satisfied**

17 The Plan is not "fair and equitable" for purposes of the "cram down" under 11 USC
18 1229(b) because the Plan does not satisfy the "absolute priority" rule. The Absolute Priority rule
19 requires that the rejecting Class be provided for in full before any junior class can receive or retain
20 property under a plan. In this case, the Plan provides favorable treatment and unfairly benefits
21 junior creditor Jim Rhodes and his nondebtor Arizona entities because (as set forth above) the
22 Steering Committee failed to properly value the Arizona Assets, giving no value for the water
23 rights associated with the Arizona Assets that were developed by the services provided by Stanley
24 pursuant to the documentation attached to Stanley three proofs of claim (48, 49 and 52). See
25 *Exhibit 1, Frohnen Declaration.* Consequently, Jim Rhodes and his nondebtor Arizona entities
26 are not paying sufficient value for the Arizona Assets. The Declaration of Charles Hewlett
27 attached to the Supplemental Brief as the basis for the Valuation of the Arizona Assets fails to take
28 into account the water rights associated with the Arizona property. Property with water rights is

1 significantly more value than property without water rights. As such, the valuation of the Arizona
2 Assets is not accurate.

3 Second, Jim Rhodes and his nondebtor Arizona entities used the assets of the Arizona
4 Debtor entities to improve Rhodes nondebtor Arizona property, including but not limited using the
5 services of Stanley to improve property and obtain water rights. *Exhibit 1, Frohnen Declaration*.
6 These services were provided pursuant to Stanley's three proofs of claim (POC 48, 49 and 52) and
7 supporting documentation.¹ *Id.* As such, Rhodes and the Arizona entities are not providing new
8 value for the Arizona Assets.

9 As set forth at page 25 of the First Lien Steering Committee's Supplemental Brief in
10 pertinent part:

11 "Pursuant to the "new value exception", an existing equity holder
12 may receive a distribution of the property . . . if the equity holder
13 offers value to the debtor that is (i) new, (ii) substantial, (iii) money
14 or money's worth, (iv) necessary for a successful reorganization and
15 (v) reasonable equivalent to the value or interest received. *In re*
Bonner Mall, 2 F.3d at 908; *Oxford Life Ins. Co. v. Tucson Self-*
Storage, Inc. (In re Tucson Self-Storage, Inc.), 166 B.R. 892, 899
(B.A.P. 9th Cir. 1994).

16 *See Supplement, at 25, ¶ 34.*

17 In this case, the Plan is not entitled to the "new value exception" because Rhodes and the
18 Arizona entities are not providing "new value" for their equity interest. Rhodes and his nondebtor
19 entities used the assets of the Debtor entities to improve real property owned by Rhodes and his
20 nondebtor Arizona entities, including but not limited the loan proceeds from Credit Suisse and the
21 engineering services provided by Stanley and that form part of Stanley's proofs of claims. *Exhibit*
22 *1, Frohnen Declaration*. As such, Rhodes and companies are not entitled to the new value
23 exception and, therefore, the Plan unfairly discriminates and is not fair and equitable.

24 ///

25 ///

26 _____

27 ¹ Stanley incorporates by reference, as if fully set forth herein, its three proofs of claim (POC 48,
28 59 and 52), including the supporting documents attached thereto, providing the written contracts
and accounting statements for the work provided but not paid for by Debtors.

1 **3. Treatment to Stanley Fundamentally Unfair**

2 Stanley is owed millions of dollars by the Debtors for engineering services Stanley
3 provided pursuant to written agreements that are the subject of Stanley's proofs of claims. The
4 Debtors have never objected to Stanley's proofs of claim. The work provided by Stanley to
5 Debtors was for the improvement of real property that is owned by Debtors and Rhodes nondebtor
6 Arizona entities. Rhodes and the nondebtor entities now seek to purchase the Arizona Assets
7 without fully disclosure the full value of the Arizona Assets and without paying the proper value
8 of the Arizona Assets. This Court cannot approve the Plan that gives Rhodes and his nondebtor
9 Arizona entities preferential treatment with respect to the purchase of the Arizona Assets.

10 **Conclusion**

11 For the reasons set forth above, Stanley opposes the cram down of the Plan. The First Lien
12 Steering Committee has failed to meet its burden to establish that the Plan does not discriminate
13 unfairly and establish that the Plan is fair and equitable.

14 February , 2010

15 Respectfully submitted,

16 ANDERSON, McPHARLIN & CONNERS LLP

17
18 By 

Janiece S. Marshall, Esq.

777 North Rainbow Boulevard, Suite 145

Las Vegas, Nevada 89107

Tel. (702) 479-1010

Attorneys for Creditor, Stanley Consultants, Inc.

CERTIFICATE OF SERVICE VIA ELECTRONIC MAIL

I am employed in Clark County. I am over the age of 18 years and not a party to this action. My business address is Anderson, McPharlin & Connors LLP, 777 North Rainbow Boulevard, Suite 145, Las Vegas, Nevada 89107.

I hereby certify that on this 2nd day February 2010, I did serve, via Electronic Mail by the ECF system a copy of the above and foregoing **STANLEY CONSULTANTS, INC'S OPPOSITION TO FIRST LIEN STEERING COMMITTEE'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED MODIFIED PLAN (DOC. #962)** as follows:

Pachulski Stang Ziehl & Jones LLP
Attn: James I. Stang
10100 Santa Monica Boulevard #1100
Los Angeles, CA 90067

Larson & Stephens
Attn: Zachariah Larson
810 S. Casino Center Boulevard, Suite 104
Las Vegas, NV 89101

Akin Gump Strauss Hauer & Feld LLP
Attn: Philip C. Dublin
One Bryant Park
New York, NY 10036

Kolesar & Leatham, Chtd.
3320 West Sahara Avenue, Suite 380
Las Vegas, NV 89102

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of February 2010.



JULIE A. GARCIA
Employee of
ANDERSON, McPHARLIN & CONNORS LLP

ANDERSON, McPHARLIN & CONNORS LLP
LAWYERS
777 NO. RAINBOW BLVD., SUITE 145
LAS VEGAS, NEVADA 89107
TEL (702) 479-1010 • FAX (702) 479-1025